

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

HOLIDAY INN SELECT

Employer

and

UNITE HERE LOCAL 17

Petitioner

Case 18-RC-17363

**DECISION AND DIRECTION OF ELECTION**

Petitioner seeks an election in a unit of all full-time and regular part-time employees employed by the Employer at its 3 Appletree Square, Bloomington, Minnesota facility, excluding front desk, PBX, reservations, engineer/maintenance employees, accounting employees, the catering department, office clerical employees, professional employees, and guards and supervisors as defined in the National Labor Relations Act, as amended. The Employer contends that it is not appropriate to leave out any employees other than accounting and sales employees and the usual statutory exclusions (office clericals, and guards and supervisors).

Although the parties stipulated to the supervisory status of much of the Employer's management staff, several positions remain in issue. The Employer contends, and Petitioner denies, that housekeeping supervisors Aclema Eggert, Kheng

Pheng, Leelawatie Persaud, and Claudia Espino are also supervisors within the meaning of the Act.<sup>1</sup>

Based on the evidence and the Board's cases, I conclude that the front desk, PBX, and reservations employees have a sufficient independent community of interest to justify their exclusion from the unit. Maintenance employees, on the other hand, do not, and are included in the unit with the other "blue collar" employees with whom they share a community of interest. I also conclude that the Employer failed to prove that housekeeping supervisors are "supervisors" within the meaning of Section 2(11) of the Act, and that therefore, they are eligible to vote.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it

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<sup>1</sup> At the hearing, the Employer contended that banquet houseman supervisor Brian Gottlieb was a supervisor, and Petitioner disputed that. In its brief, however, Petitioner withdraws its objection to Gottlieb's exclusion. In any event, I find that Gottlieb makes an effective recommendation for wage increases by doing job evaluations the score from which determines the amount of employees' annual increases, and he is therefore a supervisor.

Although Petitioner took the position at the opening of the hearing that reservations manager Brandon Henninkamp was a supervisor, the only evidence about his duties was to the effect that he analyzes the hotel's costs and revenues and makes recommendations to his superiors regarding pricing decisions. There is no evidence he has any subordinates. Petitioner does not renew its claim that Henninkamp is a supervisor in its brief. The record lacks a factual basis on which to find him a supervisor; in any event, it appears he is in the front desk department and excluded from the unit on that ground.

will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The first section of this decision will summarize the record regarding the Employer's operation and organization. The second section reviews the record evidence concerning general employer policies, wages, benefits and other conditions of employment. The third section delineates the job duties, and skills, training and experience required of the employees in various job classifications, as well as evidence regarding practices at other hotels. Finally, the Analysis section explains my conclusion that the unit sought by Petitioner is only appropriate with certain modifications.<sup>3</sup>

### **1. THE EMPLOYER'S FACILITY**

The Employer operates a full-service hotel, offering 429 sleeping rooms on 13 floors.

The basement of the building includes the housekeeping and maintenance offices and facilities, storage rooms, and mechanicals. The first floor has a gift shop, restaurant,

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The Employer, Holiday Inn Select, is a corporation engaged in the operation of a hotel located at 3 Appletree Square, Bloomington, Minnesota. During the past 12 months, the Employer has purchased and received at its Bloomington, Minnesota, facility goods and services valued in excess of \$50,000 directly from suppliers located outside the state of Minnesota, and earned gross revenues in excess of \$500,000.

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The Employer's post-hearing brief was not considered because it was not filed timely and in accordance with the Board's Rules and Regulations. More specifically, a faxed copy of the brief was received by the Region after the close of business on the date briefs were due. In addition, Section 102.113 of the Board's Rules and Regulations specifically prohibits the filing of post-hearing briefs by facsimile.

bar, kitchen, lobby and reception desk, front office, a fitness center, a swimming pool, the bellman's storage room, a changing room and a luggage room. The accounting office is also located there. The second floor has offices and meeting rooms sufficient to serve 350-400 patrons for a meeting with a meal, or up to 700 patrons attending a lecture or audio-visual presentation.

The building includes two employee breakrooms, one on the first floor open to all employees and one in the basement used in practice mainly by housekeeping department employees. All employees share a designated entrance and a time clock located on the first floor. According to General Manager Mike Wilke, the Employer hosts three or four employee meetings a year, one of which is a Christmas party. Although there is more than one meeting to accommodate all shifts, all departments attend the same meeting together.

## **2. GENERAL TERMS AND CONDITIONS OF EMPLOYMENT**

General Manager Wilke testified as to employees' uniforms, wages and benefits, and other Employer policies. The front desk employees, bell staff, and "front of the house" food and beverage staff wear the same basic uniform – dark pants or skirt, white top, and tie. Banquet staff wear a bow tie. There was no evidence on whether any uniform or dress code applies to maintenance, kitchen or housekeeping employees.

Wages ranges are as follows: front desk staff earn \$10-15 per hour; maintenance employees \$10-20; and cooks \$10-14. Food servers earn \$5.15 per hour and banquet employees about \$9 per hour in base wages, but sometimes these employees make up to five times that much in gratuities and service charges. No evidence was offered regarding bellmen/drivers' or housekeeping employees' wages.

All fringe benefits are available equally to employees in all the departments. The Employer's handbook and employment policies apply equally to all employees. According to Wilke, all hiring and termination decisions are "centrally controlled." He testified that no hiring decisions can be made without going through the human resources department and himself. No further details were offered with regard to what role, if any, each department's supervisor plays in hiring and discharge decisions.

### **3. CLASSIFICATIONS OF EMPLOYEES**

Again, General Manager Wilke presented the majority of the evidence as to each department and classification of employee.

**Bellmen/van drivers** There are ten employees who work as bellmen/van drivers. The bell stand is a podium next to the front desk, and bellmen use a luggage closet in a service hallway behind the front desk. Bellmen/drivers work basically two shifts, day and evening, although individual employees' start times are staggered by a couple of hours. No bellmen/drivers are assigned to work between about midnight and 5 a.m. Bellmen/drivers report to bell captain Dick Routhe, who in turn reports to assistant general manager Randy Fors. No evidence was offered to describe Routhe's specific authority or responsibility.

**Front desk** There are seven or eight desk clerks, also called guest service representatives, assigned to the front desk. They greet the guests, check them in and answer their requests. They work a day and an evening shift like the bellmen/drivers, with the addition of a swing shift on Saturdays. On weeknights, there is a night auditor who covers the front desk on the graveyard shift. There are five PBX (switchboard) operators who work at the front desk answering the outside phones and directing calls.

During the week, one or two front desk employees concentrate on answering telephonic requests for reservations. "Half" of the PBX operators are trained to handle front desk duties.

These employees report directly to assistant guest service representative Gretchen Heim, and the parties stipulated that she is a supervisor within the meaning of the Act. Heim reports to assistant general manager Fors. Again, no evidence was offered regarding Heim's specific authority or responsibility.

Keys for the restaurant, cashier station, and the housekeeping office are kept at the front desk. Employees responsible for opening or closing those areas have to check them out with a front desk employee and return them as appropriate. All telephone calls go through the front desk. Wilke estimated that Front desk employees will exchange calls with the housekeeping office 50 to 100 times a day with information about what rooms need cleaning, with special requests, or with special situations like a guest holding over past a scheduled departure. He also estimated that Front desk employees will exchange 20-30 calls a day with the maintenance department.

**Concierge** The Employer employs two concierges. The a.m. concierge begins at 5:30 a.m. and works until approximately 9:30 a.m., Tuesday through Friday. The p.m. concierge works Monday through Thursday from about 4:30 p.m. to 10:00 p.m. There is no evidence about where they do their work or to whom they report. The parties agreed that the concierge position should be included in the unit.

**Food and beverage service** In food service, the Employer employs five banquet bartenders, five banquet housemen, and twelve banquet servers. In the restaurant, there are six host/cashiers, twelve servers, four bussers, six or seven cooks,

two or three “pantry” cooks (cold food preparation), and five or six dishwashers. In the bar, there are six bartenders and two or three cocktail servers. There are four room service attendants.

The parties stipulated that food and beverage director Paul Schirmers, food and beverage managers Peter Hunt and Jolene Cole, executive chef Jay Claro, catering director Kris Farrington, catering manager Cindy Hatch, and banquet managers Matt Alaboud and Sarah Wallace are supervisors within the meaning of the Act. There is no evidence regarding the particulars of their duties and responsibilities beyond what would be suggested by their titles.

Although the Employer employs a catering director and a catering manager, there was no evidence presented of any catering employees, or of what they might do. Petitioner requested exclusion of catering employees from the unit, but the Employer never stated a position. In light of the lack of record evidence, catering employees, if any, will be left to the challenged ballot procedure.

**Maintenance** The maintenance department includes six or seven employees who report to Chief Engineer John Ohman, a stipulated supervisor. Wilke testified that maintenance employees are on a pay scale similar to that of the front desk employees, but that a couple of them are higher paid by virtue of having been employed there for a long time. City ordinance requires a license for application of swimming pool chemicals, and Ohman and one other current maintenance employee have it. Ohman also has a boiler's license. However, Wilke testified that the Employer does not require maintenance employees to hold any certifications or licenses as a condition of employment.

Maintenance employees work all over the hotel building and grounds, changing light bulbs, repairing wallpaper and painting, fixing burns in the carpets, changing belts and filters, etc. In the winter, they also shovel snow and put down sand and salt, with assistance from the night cleaner and the bellman/drivers. When large deliveries arrive, maintenance employees are called to help unload, along with other employees from various departments, including bellman/drivers, housekeeping employees, housemen and the lobby attendants.

No particular skills or experience are required of maintenance employees – the only qualification stated is that the Employer looks for “home handyman types.” Complex repairs are contracted out. Two to four maintenance employees are scheduled on a day shift, one on an evening shift, and no maintenance employees are generally scheduled to work between about midnight and six a.m.

All the maintenance employees carry two-way radios. All supervisors and managers also carry such radios, and they use them to call in maintenance requests. Many employees can also access radios that are stationed at the front desk, the bell stand, the restaurant cashier stand, and in the kitchen. All employees have access to “maintenance request forms” that they can fill out and deliver to the maintenance department to report problems in the facility. Maintenance employees are also expected to read guest comment cards and take other initiatives to find their own work.

**Housekeeping** In the housekeeping department, there are 32-35 room attendants, five housemen, nine or ten laundry attendants, a day cleaner and a night cleaner, also called “lobby attendants,” who clean public areas such as the lobby. Room attendants are assigned rooms to clean usually in blocks of 15-17. Housemen



do a variety of tasks such as delivering linens and other supplies, emptying garbage, stripping beds, and various cleaning responsibilities. Other than the lobby attendants, housekeeping department employees tend to work just one shift, from about 7:30 a.m. to around 4:00 or 4:30 p.m.

Executive Housekeeper Digna Quito (a stipulated supervisor) supervises the housekeeping department. She reports to the hotel's assistant general manager, Rodney Fors, a stipulated supervisor. Quito works five days a week. She is responsible for writing the basic schedule, one week at a time, which shows who works on what days. That schedule may change on a day-to-day basis, and the Employer occasionally supplements its housekeeping staff with temporary employees from a contract agency, based on fluctuations in occupancy.

The Employer contends, and Petitioner denies, that housekeeping "supervisors" Aclema Eggert, Kheng Pheng, Leelawatie Persaud, and Claudia Espino are also supervisors within the meaning of the Act. Housekeeping supervisors inspect rooms to make sure that the room attendants have done their work adequately. Certain small problems, like replacing a bar of soap, are taken care of on the spot by the housekeeping supervisor. In the case of a bigger deficiency, the housekeeping supervisor can direct a housekeeper to return to the room and remedy the deficiency. If the housekeeping supervisor detects a trend or a more serious problem, she is to report it to Quito.

One or two housekeeping supervisors fill in for Quito on the two days she does not work, usually Sunday and Monday. Quito "opens" two days a week at about 6:30 a.m., and one of the housekeeping supervisors opens the other five days. Opening

requires that the person on duty get the keys, open the office, open a document on the computer that shows which rooms are scheduled for cleaning, and then assign each scheduled employee to a block of rooms. If the occupancy rate is significantly different on a given day from that predicted when the weekly schedule was made up, a housekeeping supervisor has to send housekeepers home, call in additional housekeepers, or contact a temporary agency for additional employees, as needed.

At the time of each of the cleaners' three breaks per shift, they are required to report how much progress they have made on their scheduled list of tasks, and the housekeeping supervisor on duty has to evaluate whether to adjust anyone's list to make sure everything gets done by the end of the day.

Wilke testified that housekeeping supervisors "participate" in training, "provide input" for annual evaluations, and document behavioral issues "with a recommendation [to Quito] that the procedures be followed that we follow in those types of things." However, Quito is solely responsible for filling out and delivering evaluations and disciplinary forms.

Wilke testified that only the newest housekeeping supervisor, Espino, is still regularly assigned to clean rooms, one day a week. He based that testimony on a review of payroll records that showed her having been paid a cleaner's pay rate for 20 percent of her time, and a higher rate for classification as a supervisor for the rest, although the Employer did not offer any of these pay records into the record. Wilke also testified that the housekeeping supervisors have independent authority to grant or deny employees' requests for time off.

One of the room attendants testified that the only time she asked for time off on short notice, to visit the Salvadoran embassy about an immigration problem, she was told by Housekeeping Supervisor Eggert that she had to call Quito at home for permission, and Quito refused permission for the room attendant to leave.

Espino testified that if she needs more or fewer employees than are on schedule, she has to call Quito, at home if necessary, and that room assignments are based on an established mathematical formula. Espino also testified that she regularly cleans rooms two days a week and gets paid her supervisor's wage rate every time. She brought a recent pay stub which was introduced into evidence, showing she was paid at a single hourly rate for both cleaning and inspection duty performed during one pay period.

**Employees in multiple classifications** In response to questioning by the hearing officer, Wilke testified that 20 or more employees work in more than one job classification. He listed four examples off the top of his head where employees work in two departments (by classification, not by name): housekeeping and banquets; bellman and kitchen; cashier and concierge; and banquets and concierge. These employees are trained in several functions so that the Employer has a flexible back-up staff.

One employee testified for Petitioner that he works as a bellman/driver, in banquet service, as a dishwasher, in the laundry, and as a pantry and line cook. Another employee testified that she and at least one other employee work as banquet servers and as fill-in for the concierge. The record was silent as to how these employees split their time among the various classifications.

**Local industry practice** Petitioner represents employees at 15 or 16 local hotels, predominantly including housekeeping and food and beverage employees in the

bargaining unit. Three of these units also include front desk and PBX employees, and five units include maintenance employees. Organizing Director Martin Goff testified that front desk and PBX employees are included at one hotel because it is small enough that those employees do a substantial amount of room service deliveries; at a second hotel because a city financing agreement demanded neutrality and labor peace and mandated a bargaining unit; and at a third because it was jointly organized with a Teamsters union, which initially represented the front desk and van drivers. However, UNITE HERE eventually walked away from the joint unit. Goff acknowledged representing maintenance employees at five hotels that subscribe to an “Area Standard Agreement” because they assist housekeepers with heavy lifting, like turning mattresses, and possess no distinctive skills or expertise.

#### **4. ANALYSIS**

##### **A. Unit Scope**

The Act permits a union to petition for *an* appropriate unit, and does not require it to seek the *most* appropriate unit, even when a different unit than that petitioned for might be more appropriate than the one it seeks. Omni International Hotel, 283 NLRB 475 (1987), Holiday Inn City Center, 332 NLRB 1246 (2000). The Board makes unit determinations in the hotel industry on a case-by-case basis, utilizing traditional community-of-interest criteria. Los Angeles Airport Hilton, 287 NLRB 359 (1987). To carve out one or more departmental units for exclusion requires some showing that the excluded groups possess some community of interest distinct from the departments sought to be included. The general criteria that the Board will examine in making this determination include: distinctions in skills and functions of particular employee groups,

separate supervision, the employer's organizational structure, differences in wages and hours, integration of operations, employee transfers, interchange and contacts with other employees. Dinah's Hotel and Apartments, 295 NLRB 1100, fn. 3 (1989). While industry practices are relevant to the unit determination, they are not determinative.

The Board has frequently recognized the fundamental distinction between a hotel's "white collar" group of front desk employees, akin to office clerical employees, and its "blue collar" group of more manual and physical workers. Dinah's Hotel, 295 NLRB at 1101. The Board will refuse a petitioner's request to carve out a front desk group like that in issue here (front desk clerks, telephone switchboard operators, reservations clerks, by whatever titles they may be known) if those employees perform a substantial amount of "blue collar" work. E.g., Holiday Inn Alton, 270 NLRB 1405 (1984) (front desk employees cleaned rooms); Golden Eagle Motor Inn, 246 NLRB 323 (1979) (front desk employees performed maintenance work and cleaned rooms); Holiday Inn Atlanta Northwest, 214 NLRB 930 (1974) (front desk employees assisted waitresses and inspected room cleaners' work). I find no evidence in this record that any front desk clerk, PBX operator, or night auditor has actually performed any work normally reserved to the other classifications.

I recognize that the front desk group has significant contacts with the other employees. Bellmen/drivers frequently work in close proximity to the front desk; employees from all the departments get keys there; front desk clerks frequently relay requests and orders for maintenance work, housekeeping services, and room service to the other employees. Those factors are true in all of the cited cases, however, and are

insufficient to overcome the separate community of interest established primarily by the type of work performed by the front desk group.

In Dinah's Hotel, supra, the Board overturned a decision by the Regional Director in which he found that the petitioned-for unit of the front desk employees was not an appropriate unit, and that the only appropriate unit was an overall unit including all employees in the housekeeping, maintenance and front desk departments. The Board was persuaded by evidence of a distinctive community of interest held by the front desk employees, including a lack of interchange with other employees, higher wages, separate supervision, and infrequent assistance provided to employees in other departments. The Board cited as most important the fact that the front desk employees performed work which varied greatly from that of the other employees. The Board found that these factors outweighed the regular and routine contact between employee groups, similar working conditions and benefits, and centralized supervision by the manager. It wrote, "...the differences in the nature of the respective duties and in the respective conditions of employment of these employee groups graphically illustrate that the Employer's "white collar" force (the front desk/clerical employees sought here) do not share a sufficient community of interest with the Employer's "blue collar" force (the manual/physical employees) to mandate their inclusion in an overall unit."

The instant case presents a similar factual scenario. While the front desk employees may not earn higher wages than other employees, they are separately supervised, have discrete functions and duties that other employees lack the skill, training, and authority to perform. There was no evidence that they provide any assistance to the petitioned-for employees in doing their "blue collar" jobs. Likewise,

they do not perform any of the duties of the other employees even temporarily. It appears that they do not even have reason to go into the other employees' departments, and that they perform largely white collar, office-clerical type functions. These facts lead to the conclusion that the front desk employees possess a community of interest all their own, quite distinct from other employees.

Maintenance employees, on the other hand, do not have a sufficiently distinct community of interest to justify excluding them from Petitioner's proposed unit. These employees possess no training or skills that would distinguish them from the petitioned-for "blue collar" employees. The Employer does not require them to possess licenses or certifications, only to have the basic skill level of a home handyman. (There is one license at the hotel, required for application of pool chemicals, but there was no evidence regarding what if any training or testing is required for it.) Maintenance employees perform work in all other areas of the hotel, where they are in frequent, work-related contact with all employees in the petitioned-for unit. Further, maintenance employees do have some overlap of duties with employees in other classifications in terms of their responsibility for shoveling, sanding and salting the exterior of the Employer's property in the winter (with bellman/drivers and the night cleaner), and also, in assisting with the receipt of large deliveries to the hotel (with bellman/drivers, housekeeping employees, housemen and the lobby attendant).

Petitioner argues in its brief that the Employer requires maintenance employees to possess skills not required of other employees. I do not view "home handyman" skills as the type of skills that are material to this unit determination. They do not limit mobility into or out of the department, or limit the job market open to any classification. Nor do I

consider the higher wage paid to an indeterminate number of maintenance employees significant. Wilke testified without contradiction that maintenance is on a similar wage scale to other classifications, but that a few maintenance employees reached the wage pinnacle as a result of greater longevity.

I have found no case in which the Board permitted maintenance employees to be carved out of a blue-collar hotel unit without some evidence of specific experience required as a prerequisite to hiring, or some craft-like skills possessed and exercised by at least some members of the maintenance department. See Holiday Inn City Center, 332 NLRB at 1255.<sup>4</sup> There simply was no evidence that the maintenance employees have any specialized training, perform highly skilled maintenance work, or have substantially different working conditions than the other unit employees. Without such distinction, I find the fact that there has been no interchange into or out of the maintenance department outweighed by the other community of interest factors.

Accordingly, while I find that Petitioner's request to exclude front desk and PBX employees is appropriate, I find that exclusion of maintenance employees is not appropriate, and therefore include them in the unit found appropriate.<sup>5</sup>

#### B. Supervisory Issue

It is well-established that the burden of establishing supervisory status rests on the party asserting it, and any deficiencies in the record must be construed against the

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<sup>4</sup> I consider Petitioner's evidence regarding its other contracts marginally supportive of this finding as well, in that it represents maintenance employees at other hotels where they do not have distinctive skills or experience.

<sup>5</sup> In addition to the challenge issue regarding catering employees noted in the section on food and beverage employees, the Employer proposed to exclude sales employees, but Petitioner did not address that by stipulation, and no evidence was offered regarding sales employees' supervision, duties, or anything else. Accordingly, they will have to be addressed if at all through the challenge procedure.



party asserting supervisory status. NLRB v. Kentucky River Community Care, Inc., 121 S.Ct. 1861, 1866-1867 (2001). Supervisory status will only be found where an individual uses independent judgment and discretion to exercise one or more of the supervisory indicia specifically set forth in 2(11) of the Act. Id.

Conclusionary statements to the effect that a person has or exercises one of the statutory criteria is insufficient to prove supervisory status without some explanation or detailed support. Authority to give some instructions or minor orders does not make a person a supervisor. In enacting Section 2(11) of the Act, Congress sought to distinguish between persons who are truly vested with management prerogatives and “straw bosses, leadmen, and set-up men” (NLRB v. Bell Aerospace Co., 416 U.S. 267, 280-281 (1974)), who have authority to issue some directions or “minor orders.” E.g., Armstrong Machine Co., 343 NLRB No. 122 (Dec. 16, 2004); Rhee Bros., Inc., 343 NLRB No. 80 (Nov. 23, 2004).

I conclude that the Employer has failed to prove that the housekeeping supervisors Eggert, Pheng, Persaud, and Espino, are supervisors within the meaning of the Act. The testimony indicated that these individuals provide “input” on employee evaluations, and make recommendations that the “usual procedures” be followed on disciplinary issues. The Employer did not offer a copy of an evaluation or any other evidence of what this “input” includes or what use Executive Housekeeper Quito makes of it. The Employer did not describe any incident that led to a housekeeping supervisor’s “recommendation” of discipline or the result of the recommendation. Thus, the Employer failed to establish that the housekeeping supervisors make “effective

recommendations” of reward or discipline as required by Section 2(11) in order to find supervisory status.

Wilke testified conclusionarily that housekeeping supervisors can grant time off upon an employee’s request, and call in additional employees to fill the schedule if unanticipated demand renders the regular complement insufficient. Wilke, however, offered neither examples of this occurring nor any evidence regarding the basis for his conclusion. There is no evidence the housekeeping supervisors (or any other employees) were ever told they have this hypothetical authority, nor evidence that housekeeping supervisors have exercised this authority. On the other hand, the sole housekeeping supervisor who testified said that she has to call Quito, at home if necessary, in such situations. In light of the burdens and standards for proving supervisory status, I find that the Employer failed to prove any actual delegation or practice of supervisory authority.

Housekeeping supervisors are chiefly responsible for performing a checking function on the work of the room attendants. The most the housekeeping supervisors can do independently to enforce their inspection is to make a room attendant come back to the room and correct deficiencies. There is no evidence that such action has any substantial consequence to employees. This type of inspecting function, including reporting to management deficiencies in the work of other employees, is not considered to be a supervisory function. Brown & Root, Inc., 314 NLRB 19 (1994).

In the absence of Executive Housekeeper Quito, housekeeping supervisors assign blocks of rooms to various employees. However, the assignments appear to be based on a rote formula they have been trained to apply, and not as a result of the exercise of

independent judgment. There is no evidence that different assignments make any difference to the employees. Even the changes that they make to these assignments during the day do not rise beyond the level of routine modifications designed to ensure that the work is timely completed. They do not involve independent judgment or discretion. None of the other authority they possess rises to the level of supervisory status under Section 2(11). Accordingly, I conclude that Eggert, Pheng, Persaud, and Espino are not supervisors, but employees of the housekeeping department, and they are therefore eligible to vote.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time bellmen/van drivers, concierges, food and beverage and banquet employees, maintenance employees, and housekeeping department employees employed by the Employer at its 3 Appletree Square, Bloomington, Minnesota facility; excluding front desk employees, PBX operators, reservations clerks, accounting department employees, office clerical employees, professional and managerial employees, and guards and supervisors as defined in the Act.

#### **DIRECTION OF ELECTION**<sup>6</sup>

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of

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Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **May 27, 2005**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlr.gov](http://www.nlr.gov).

Election to be issued subsequently, subject to the Board's Rules and Regulations.

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, and who meet the eligibility formula set forth above. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>7</sup>

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **UNITE HERE Local 17**.

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To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, 330 South Second Avenue, Minneapolis, MN 55401-2221, on or before close of business **May 20, 2005**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Signed at Minneapolis, Minnesota, this 13th day of May 2005.

/s/ Robert W. Chester

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Robert W. Chester, Acting Regional Director  
National Labor Relations Board  
Region Eighteen  
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